

#13
11/11/10

Attorney Docket: 4400/8000-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Yoshihiro Suzuki et al.

Confirmation No.: 3652

Patent No.: 6,561,716

Art Unit: 3671

Filed: June 1, 2000

Examiner: Robert Pezzuto

For: UNIVERSAL JOINT DEVICE AND METHOD
OF MANUFACTURING THE DEVICE

Issued Date: May 13, 2003

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEES IN EXPIRED PATENT**

MS Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

This is a petition to accept payment of maintenance fees for U.S. Patent No. 6,561,716 ("the '716 patent") after expiration of the patent, wherein the delay in payment of the maintenance fees was unavoidable. *See* 37 CFR §1.378(b). The required maintenance fee owed under 37 CFR §§1.20(e)-(f) (\$980) and the surcharge owed under 37 CFR §1.20(i)(1) (\$700) are submitted concurrently herewith by authorization to deduct these amounts from Deposit Account No. 50-4570. As shown below, all of which is based upon information and belief, the delayed payment was unavoidable since reasonable care was taken to ensure that the maintenance fees would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

**Steps Taken To Ensure Timely Payment
Of The Maintenance Fee**

The '716 patent issued on May 13, 2003 and the first maintenance fee for this patent could have been paid during the period from May 13, 2006 to November 13, 2006. The fee also

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could have been paid with a surcharge during the period from November 13, 2006 through May 13, 2007. The fee was not paid and accordingly, the patent expired after midnight on May 13, 2007

The assignee of the patent is Kabushiki Kaisha Somic Ishikawa of Tokyo Japan ("Somic Ishikawa"). Its patent affairs are handled in Japan by Kabasawa & Associates of Tokyo Japan ("Kabasawa"). Kabasawa engaged the firm of Darby & Darby ("Darby") to prosecute the patent application which led to the patent in the United States and to be responsible for paying maintenance fees in the U.S.

As of 2005 Darby had been in business as an intellectual property firm with a significant U.S. Patent prosecution practice for 110 years. It had a separate department of the firm which handled maintenance and annuity fees. The department had an experienced manager and from four to five paralegals. It also had well established and time-tested procedures for assuring that maintenance fees were timely paid. It included a docketing system that would notify the maintenance and annuity fee paralegals as well as the working, supervising and billing attorneys if a due date was approaching.

As of March 31, 2010, Darby ceased the practice of law. As a result it has been difficult getting information and documentation for this petition.

Near the end of 2005 Darby sent to Kabasawa a list of patents in which annuities were due in the 4th Quarter of 2006. The '716 patent was on the list.

By May 21, 2006 Kabasawa had returned the list to Darby with an indication that the maintenance fee for the '716 patent should be paid. A copy of the list is attached as **Exhibit A**.

One of the paralegals, Perry Moy, was assigned to handle the payment. Mr. Moy was well trained in the procedures that had been established and had paid numerous maintenance fees in the past without incident. He followed the existing procedures to a point. In particular, he updated the docketing system to indicate that the payment had been made. Attached as **Exhibit B** is a printout of the docket for this patent indicating that the first maintenance fee was paid on

July 27, 2006. He also notified accounting of the payment. As a result, an invoice was issued to Kabasawa for payment of the fee. A copy of the invoice for the fee dated August 31, 2006 is attached as **Exhibit C**. The one critical thing that Mr. Moy forgot to do was to notify MDC, the maintenance fee company used by Darby, that they should effect payment of the fee.

Thus, as of August 31, 2006, everyone at Darby assumed the fee had been paid as reflected by the updated docket system. Kabasawa and Somic Ishikawa assumed it had been paid because that was their instruction and they were billed for the service.

With Darby no longer being in business and the second maintenance fee coming due on May 13, 2010, Kabasawa began to look into alternative ways of getting the fee paid. In October 2010, Kabasawa checked public PAIR and learned for the first time that the patent had expired in 2007 for non-payment of the first maintenance fee. However, Kabasawa no longer had a contact at Darby whom they could question about the situation.

Eventually on October 20, 2010, Kabasawa contacted the Dissolution Committee of Darby to inquire as to what happened. A copy of an e-mail to the Dissolution Committee is attached as **Exhibit D**. The undersigned is a member of the Dissolution Committee.

After an investigation that was as complete as possible, considering that Darby has only a small staff for collecting accounts receivables, and not part of the former maintenance fee department, the undersigned agreed to submit this petition.

**Legal Principals That Support Acceptance of This
Late Payment of Maintenance Fee**

Under 35 U.S.C. § 41(b), the Director may accept late payment of a maintenance fee if the delay in payment is shown to have been "unavoidable." To satisfy the "unavoidable" standard, "one must show that he exercised the due care of a reasonably prudent person," *Ray v. Lehman*, 55 F.3d 606, 609 (Fed. Cir. 1995). This legal standard was also addressed in *In re Mattullath*, 38 App. D.C. 497, 514-15 (D.C. App. 1912), which explains the meaning of the word "unavoidable" in the context of delayed maintenance fee payments as follows:

It is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them, in the exercise of this care, to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all the other conditions of good faith and promptness in its ratification being present.

To paraphrase, if a patentee relies upon "the ordinary and trustworthy agencies of mail," "worthy and reliable employees," and "other means and instrumentalities" that are usually employed by "prudent and careful men in relation to their most important business," and a failure occurs "unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities," such failure may be said to have been "unavoidable" if all other "conditions of good faith and promptness" are present.

Here the assignee Somic Ishikawa and its agent Kabasawa relied in good faith upon these types of trustworthy and reliable means and instrumentalities. In particular, they provided clear instructions to Darby, a firm in business for 110 years, and a firm they could reasonably consider trustworthy and reliable. Further they received confirmation that their instructions to pay the fee had been carried out.

Darby had in place procedures for payment of maintenance fees and a staff dedicated to that process. However, a single human error caused a failure to pay the fee and disabled the backup features. If Mr. Moy had merely forgotten to pay the fee, docket notices would have warned the attorneys assigned to the case and the manager of the department that the fee was not paid. If he had not notified accounting that the fee was paid, the billing attorney may have noticed and outstanding fee. Thus, the error cause harm not because of a human mistake in failing to notify MDC to pay the fee, but in completing the rest of the procedure.

Payment of the Second Maintenance Fee

The deadline for paying the second maintenance fee is November 13, 2010, without surcharge, and amounts to (\$2480). The office is authorized to deduct this amount from Deposit Account No. 50-4570.

Conclusion

Given the foregoing, the patentee hereby respectfully submits that the entire delay in paying the first (fourth year) maintenance fee for the '716 patent was unavoidable because it resulted from a single human error by a trusted employee of a firm in which the patentee could reasonably have trusted. Also, the failure to notice that the fee had not been paid was unavoidable because of the indications provided to the patentee that the fee had been paid. Accordingly, the patentee respectfully requests that this petition be granted, allowing the delayed payment of the fourth year maintenance fee to be accepted, and for the '716 patent to be reinstated.

Since the window for paying the eighth year maintenance fee without surcharge for the '716 patent closes on November 13, 2010, this Petition is being submitted concurrently with a payment of the second (eighth year) maintenance fee owed under 37 CFR §§1.20(e)-(f) for this patent.

If the U.S. Patent and Trademark Office determines that any additional fees are required, the Commissioner is hereby authorized and requested to charge any deficiency owed, and/or credit any refund due, to Deposit Account No. 50-4570.

Dated: November 11, 2010

Respectfully submitted,


By 
Melvin C. Garner
Registration No.: 26,272
LEASON ELLIS LLP
81 Main Street
White Plains, New York 10601
(914) 821-8005
(914) 288-0023 (Fax)
Attorneys/Agents For Patentee

EXHIBIT A

Return to: Polly Stevens
Fax: (212) 527-7701
Number of Pages: _____

Darby & Darby, PC Annuity Payment Authorization List/Worksheet
Annuities Due 4th Quarter 2006
Client Number: 00450 - Kabasawa & Associates

United States	Yoshihiro SUZUKI	6,561,716	09/762,319	11/13/2006	\$ 1212	<input checked="" type="checkbox"/> Pay
Title: UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE				Tax Year: 4	Entity: Large	<input type="checkbox"/> Do not pay
Our Ref: 000K683-US0					<input type="checkbox"/> Entity Status Has Changed	<input type="checkbox"/> Darby & Darby, PC
ClientRefNo: FB01003PUS						<input type="checkbox"/> Not Responsible

Annuities Due 4th Quarter 2006

Client Number: 09450 - Kabasawa & Associates

Return to: Polly Stevens
Fax: (212) 527-7701
Number of Pages: _____

UNITED STATES	DATE OF BIRTH	APPLICATION NUMBER	TAX YEAR	PAY	DONOT PAY	DARBY & DARBY, PC	NOT RESPONSIBLE
United States Title: METHOD AND DEVICE FOR LOCKING WORK MACHINE Our Ref: 000K689-US0 ClientRefNo: P0004US	Hideo FURUTA	09/513,363	11/6/2006 TaxYear: 4	\$ 1212 Entity: Large <input type="checkbox"/> Entity Status Has Changed	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
United States Title: UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE Our Ref: 000K689-US0 ClientRefNo: FB01003PUS	Yoshihiro SUZUKI	09/782,319	11/13/2006 TaxYear: 4	\$ 1212 Entity: Large <input type="checkbox"/> Entity Status Has Changed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
United States Title: ZOOM LENS CAMERA VIEWFINDER Our Ref: 100K698-US1 ClientRefNo: P9411US	Mitsuru FUKUSHIMA	08/223,701	12/13/2006 TaxYear: 12	\$ 4112 Entity: Large <input type="checkbox"/> Entity Status Has Changed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
United States Title: FUZE Our Ref: 100K707-US1 ClientRefNo: P9227US	Toshiyuki HANADA	08/135,064	11/30/2006 TaxYear: 12	\$ 2212 Entity: Small <input type="checkbox"/> Entity Status Has Changed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Records for: 09450				Total Tax:	\$	\$ 8,748	

4 Records for: 09450

Robert K. K.

**Satoshi KABASAWA
KABASAWA & ASSOCIATES**

EXHIBIT B

Darby#		000K683-U50		RECORD		1 OF 1	
COUNTRY	US	UNITED STATES	SECRET	03/762-319	UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE	FILED	6/13/1999
NEW YORK	DOA	SECRET	03/762-319			FILED	2/16/2001
RELEASED	N/A	SECRET	6561716			FILED	2/16/2001
DATE	U/L	SECRET	TRANSFER			FILED	5/13/2003
DATE	02450	Kabasawa & Associates				FILED	6/1/2000
DATE						FILED	4/29/2010

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000
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FILE	NOTE	GENERAL	AGENT	CONTACT	PROPERTY	ADVICE	REPORT	STATUS	DETAIL	CHANGE	PRINT	PDF
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<div> <div>SEARCHED</div> <div>INDEXED</div> <div>SERIALIZED</div> <div>FILED</div> </div> <div> <div>APR 22 2008</div> <div>4294208</div> <div>BY JAL</div> <div>PAY</div> </div> <div> <div>MODIFIED</div> <div>ENTERED</div> <div>STATUS</div> <div>PDF</div> </div>												

EXHIBIT C

IN ACCOUNT WITH

**DARBY &
DARBY**

PROFESSIONAL
CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK

805 THIRD AVENUE
NEW YORK, NY 10022
TEL: 212.527.7700
FAX: 212.527.7701

SEATTLE

1191 SECOND AVENUE
SEATTLE, WA 98101
TEL: 206.262.8900
FAX: 206.262.8901

FEDERAL ID NO. 13-2766173

Invoice Date: August 31, 2006

Invoice No.: 691994

Kabasawa & Associates
The NSO Building
1-22, Shinjuku, 3-Chome
Shinjuku-Ku, Tokyo 160, Japan

Client No: 09450

For Professional Services Rendered Through August 31, 2006, in Connection with the Following Matter:

9509450-000

MAINTENANCE FEES/RENEWALS

Costs Advanced

08/31/06	Maintenance Fees/Renewals	1,212.00
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Total Costs Advanced	\$ 1,212.00
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Invoice Total	\$ 1,212.00
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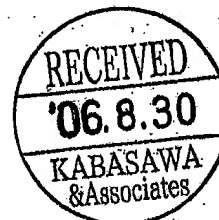


EXHIBIT D

Melvin C. Garner

From: OKITA [okita@kabasawa.com]
Sent: Wednesday, October 20, 2010 1:37 AM
To: agogoris@merchantgould.com; ludwig@fr.com; Melvin C. Garner
Cc: KABASAWA satoishi; KABASAWA & Associates
Subject: Status of the maintenance fee payment for U.S. Patent No. 6,561,716 (Darby's Ref.: 9450/0K683US0, Our Ref.: FB01003PUS)
Attachments: Invoice and Acknowledgement.pdf; Our instructions.pdf
Importance: High

Dear Sirs,

With respect to the above-mentioned U.S. Patent No. 6,561,716 (Darby's Ref.: 9450/0K683US0, Our Ref.: FB01003PUS), we noticed that it has already expired in 2007 due to non-payment of maintenance fees.

We are very surprised because we have already instructed Darby & Darby to proceed with payment of the maintenance fee, and have transferred payment soon after that. We didn't know the patent has already expired until recently, as we haven't received any notices informing us of the expiration of the patent (i.e. a Notice of Patent Expiration) from Darby & Darby.

For your information, we enclosed herewith the invoice and acknowledgement of our instructions for this case as the file attachments.

Please explain why the maintenance fee was not paid in spite of our instructions. At the same time, since our client consider this right to be important, please let us know if we can revive this patent or not.

Looking forward to hearing from you.

Yours sincerely,

Chika OKITA (Ms.)
for Satoshi KABASAWA

=====

KABASAWA & ASSOCIATES
NSO BLDG., 1-22, SHINJUKU 3-CHOME
SHINJUKU-KU, TOKYO 160-0022, JAPAN
TEL: +81-3-3352-1561
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Confidentiality Notice. This email message and any attachments may be confidential and may be subject to the attorney-client privilege or other privilege. If you are not the intended recipient, please do not read, copy or re-send this email message or its attachments; immediately notify the sender by reply email; and delete this email message and any attachments. Thank you for your assistance.

Electronic Acknowledgement Receipt

EFS ID:	8816539
Application Number:	09762319
International Application Number:	
Confirmation Number:	3652
Title of Invention:	UNIVERSAL JOINT DEVICE AND METHOD OF MANUFACTURING THE DEVICE
First Named Inventor/Applicant Name:	Yoshihiro Suzuki
Customer Number:	07278
Filer:	Melvin C. Garner/Alma D. Clemena
Filer Authorized By:	Melvin C. Garner
Attorney Docket Number:	M1596-232
Receipt Date:	11-NOV-2010
Filing Date:	06-FEB-2001
Time Stamp:	12:46:54
Application Type:	U.S. National Stage under 35 USC 371

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		PetUnavoidDelayedPymntMain tenancefees.pdf	994861 85bbbd4127287bc53df10225e71ace61423 780fb	yes	15

	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Miscellaneous Incoming Letter	1	1
	Petition for review by the Office of Petitions.	2	15

Warnings:

Information:

2		POA_STATEMENT.pdf	153483	yes	2
			660a10ff9eee85bab777a334f5ca5a60ea0b305		

	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Power of Attorney	1	1
	Assignee showing of ownership per 37 CFR 3.73(b).	2	2

Warnings:

Information:

Total Files Size (in bytes):		1148344
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: _____ 0
Yoshihiro Suzuki et al.

Patent No.: 6,561,716 Issued: May 13, 2003

Confirmation No.: 3652

Application No.: 09/762,319 Filed: February 6, 2001

Art Unit: 3671

For: UNIVERSAL JOINT DEVICE AND METHOD OF
MANUFACTURING DEVICE

Examiner: Robert Pezzuto

AUTHORIZATION TO CHARGE OUR DEPOSIT ACCOUNT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Commissioner is hereby authorized to charge the required fees below and any deficiency owed to Deposit Account No. 50-4570.

1. \$700 – 37 C.F.R.1.20(i)(1) Surcharge after expiration – Late payment is unavoidable;
2. \$980 – 37 CFR 1.20(e)-(f) Maintenance Fee owed;
3. \$2480 – Payment of the Second Maintenance fee.

Dated: November 11, 2010

Respectfully submitted,

By 

Melvin C. Garner
Registration No.: 26,272
Leason Ellis LLP
81 Main Street, Suite 503
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T: (914) 288-0022
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Attorneys for Applicants